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4 XIMPLEWARE CORP.,
5 Plaintiff,
6 v.
7 VERSATA SOFTWARE, INC., et al.,
8 Defendants.

9 Case No. 13-cv-05160-SI
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**12 ORDER RE: PLAINTIFF'S MOTION
13 FOR PRELIMINARY INJUNCTION**

14 Plaintiff XimpleWare's Motion for Preliminary Injunction is scheduled to come before the
15 Court on November 21, 2014. XimpleWare argues that defendant Versata has failed to do the
16 things it promised to do over ten months ago at the hearing on XimpleWare's motion for a
17 temporary restraining order. Motion at 6; Reply at 2. At the previous hearing, Versata
18 represented that it had no new sales of its DCM software; it did not anticipate any additional sales
19 during the 2013 calendar year; that all references to XML in the previously-created versions of
20 DCM were removed; and that a patch was created and would be sent to all of Versata's customers.
21 Docket No. 46, pg. 37. The Court accepted Versata's representations and denied the requested
22 preliminary injunction. The Court also stated that it would require, in the future, proof that
Versata did in fact do what it promised it would. *Id.*

23 XimpleWare contends that to date, XimpleWare has not been provided with any evidence
24 of Versata's delivery of a successful patch to its customers. Docket No. 103, Russo Decl. ¶ 8;
25 Docket No. 104, Halliburton Decl. ¶ 5; Reply at 2. Versata maintains that all of its customers
26 which are currently running its DCM have received a patch that eliminates any reference to or use
27 of VTD-XML in the software. Opp. at 5. Versata also stated that it had not provided XimpleWare
28 a list of customers to which the patch had been delivered, but would do so once a protective order

1 was entered in this case. *Id.* n.1. The protective order in this case was issued on October 27,
2 2014. Docket No. 116.

3 **At the motion hearing scheduled for November 21, 2014, Versata should be prepared
4 to present to the Court and to XimpleWare proof that the patch is installed and functioning
5 for all of Versata's customers, as well as a statement from Ameriprise that the second patch
6 provided by Versata is now functioning.**

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IT IS SO ORDERED.

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Dated: November 10, 2014

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SUSAN ILLSTON
United States District Judge

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